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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

High-level panel discussion on the question of the death penalty

Report of the United Nations High Commissioner for Human Rights

Summary

The present report is submitted pursuant to Human Rights Council resolution 26/2. It provides a summary of the high-level discussion on the question of the death penalty held on 4 March 2015 at the twenty-fifth session of the Council. The objective of the panel discussion was to continue the exchange of views on the question of the death penalty and to discuss regional efforts aiming at the abolition of the death penalty and related challenges.

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I. Introduction

1. Pursuant to its resolution 26/2, the Human Rights Council held its first biennial high-level panel discussion on the question of the death penalty on 4 March 2015, at its twenty-eighth session. The aim of the panel discussion was to exchange views on the question of the death penalty, and to address regional efforts aiming at the abolition of the death penalty and the challenges faced in that regard.

2. The panel was chaired by the President of the Human Rights Council, Joachim Rücker; opened by the Assistant Secretary-General for Human Rights, Ivan Šimonović; and moderated by the former President of the Swiss Confederation, Ruth Dreifuss. The panellists were the Chairperson of the African Commission on Human and Peoples' Rights, Sylvie Zainabo Kayitesi; the European Union Special Representative for Human Rights, Stavros Lambrinidis; the President of the Inter-American Commission of Human Rights, Tracy Robinson; the Commissioner from the International Commission against the Death Penalty, Mohammed Bedjaoui; and Commissioner at the International Commission of Jurists Sara Hossain.

II. Opening remarks and statements

3. In his introductory remarks, Mr. Rücker welcomed the fact that around 160 countries around the world had either abolished the death penalty, introduced a moratorium or did not practise it as a major achievement, and underlined the progress that represented from a starting point of only 14 countries in 1948. He also pointed out that under international law, the death penalty could only be imposed for the most serious crimes, and only after a fair trial, among other safeguards.

4. In his opening remarks, the Assistant Secretary-General for Human Rights described various regional efforts towards the abolition of the death penalty and expressed confidence that those initiatives contributed to the broader global trend. The Americas were the first region to witness the abolition of the death penalty, with Venezuela in 1867, many others having followed suit since. That led to the adoption of the Protocol to the American Convention on Human Rights to abolish the death penalty in 1990. In Africa, a protocol to the African Charter on Human and Peoples' Rights on the abolition of the death penalty was being considered following the adoption in 2014 of the Declaration of the Continental Conference on the Abolition of the Death Penalty in Africa (Cotonou Declaration). In Europe, since the 1990s the Council of Europe had made abolition of the death penalty a requirement for membership, and in the previous 16 years, no death sentence had been carried out in any of the 47 member States. In Asia and the Middle East, national human rights institutions, parliaments, civil society organizations and other stakeholders were actively working towards the abolition of the death penalty. In that regard, the Assistant Secretary-General pointed out that in November 2014, the representative of Indonesia to the Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights, in cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the European Union, had organized a regional meeting on moratoriums on the use of the death penalty in the region. He also mentioned that the Consultative Commission for the Protection and Promotion of Human Rights of Algeria, together with OHCHR, had organized a regional meeting in December 2014 in Algiers on moving away from the death penalty in the Middle East and the North African region.

5. The Assistant Secretary-General welcomed the fact that in the six months preceding the panel discussion, the death penalty had been abolished in Chad, Fiji and Madagascar, and that the most recent General Assembly resolution on a moratorium on the use of the death penalty (resolution 69/186) had been supported by a record number of 117 countries.

He cautioned, however, that challenges remained: despite the overall trend towards abolition, some States had decided to maintain or reintroduce the death penalty, and others continued to impose death sentences for drug-related crimes. In that context, the Assistant Secretary-General questioned the death penalty's value as a deterrent, pointing out that there was no evidence that the death penalty discouraged anyone from committing crimes. He encouraged Member States to focus their crime prevention efforts on strengthening their justice systems, since all too often it was the poor and marginalized foot soldiers of the drug trade who were executed, rather than the drug kingpins. He also urged Member States not to accept opinion polls in favour of retention, because public opinion might be based on misconceptions about the deterrent effect and fairness of the application of the death penalty. It had been empirically proved that, the more a population was aware of facts, the less it supported the death penalty. He called on retentionist States to provide public, accurate and timely figures on their application of the death penalty and on crime statistics. The Assistant Secretary-General concluded by labelling the death penalty an inhuman and outdated punishment, and called on Member States to work together to render their justice systems more effective without resorting to executing immigrants, minorities, the poor and those with disabilities in order to demonstrate a commitment to fighting crime.

III. Contribution of the panellists

6. In her introductory remarks, as moderator of the Panel, Ms. Dreifuss stated that humanity had made considerable advances towards the universal abolition of the death penalty, given the ever-increasing number of abolitionist States. She mentioned that the reality of the death penalty had become very clear: it was accompanied by high levels of social discrimination; it did not deter crime; and there was no link between maintaining the death penalty and reducing violence in a society. She remarked that exchanging experience and raising awareness about the death penalty had helped to create a situation where entire regions and continents of the world were "death penalty free".

7. In response to questions from the moderator, Ms. Kayitesi's remarks focused on issues linked to the progress made towards the abolition of the death penalty in Africa since 1999, when the African Commission on Human and Peoples' Rights adopted a resolution urging States parties to the African Charter on Human and Peoples' Rights to implement a moratorium on the death penalty and encouraging its abolition.

8. Ms. Zainabo Kayitesi pointed out that a working group on the death penalty in Africa had been created by the African Commission on Human and Peoples' Rights in 2005, the mandate of which was to give effect to article 4 of the African Charter on Human and Peoples' Rights, which enshrined the right to life. The Commission had also carried out a study on the death penalty in Africa, which recommended the drafting of an additional protocol to the Charter abolishing the death penalty.[1] The Commission had reviewed the draft protocol to the Charter in February 2015, and it was anticipated that the draft would be adopted during a regular meeting of the Commission by the end of 2015. She underlined that the draft protocol filled a legal gap in the Charter, and would provide a useful regional tool on the road to universal abolition of the death penalty. In addition, a series of regional conferences had brought together States, national human rights institutions, civil society, academics, and representatives of the African Union. At the Continental Conference on the

[1] "Study on the question of the death penalty in Africa", submitted by the Working Group on the Death Penalty in Africa in accordance with resolution ACHPR/Res.79 (XXXVIII) 05, adopted by the African Commission on Human and Peoples' Rights at its 50th ordinary session (24 October–7 November 2011), Banjul, The Gambia.

Abolition of the Death Penalty in Africa that had taken place in late 2014 in Benin, a declaration on the abolition of the death penalty in Africa had been adopted, known as the Cotonou Declaration.[2] Ms. Zainabo Kayitesi also emphasized that the Commission had adopted two resolutions urging States to implement moratoriums and abolish the death penalty, in 1999[3] and in 2008[4] respectively.

9. Ms. Zainabo Kayitesi welcomed the significant progress made towards universal abolition in Africa, indicating that in 1999, 10 countries had abolished the death penalty and 11 had de-facto moratoriums, whereas currently 19 African countries had abolished the death penalty, and 23 had de-facto moratoriums. She also indicated that 10 African countries had ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, the most recent one being Gabon.

10. In response to questions from the moderator, Mr. Lambrinidis's remarks focused on issues linked to the legal and philosophical bases of the European Union's policy on the universal abolition of the death penalty.

11. Mr. Lambrinidis underlined Europe's strong commitment to the abolition of the death penalty, which was without asterisks, and without any reservation. He highlighted the fact that abolition was required before a State could join the European Union, as abolition defined European values. He also rejected attempts to view the abolition debate from a cultural perspective, drawing attention to the diversity of cultures among members of the Council of Europe, as well as the fact that many countries with different cultural backgrounds in all regions of the world had abolished the death penalty. Mr. Lambrinidis expressed the view that those countries that had gone through terrible atrocities tended to realize the cruelty of imposing the death penalty themselves. In that regard, he referred to the Holocaust in Europe, and to the commitment of European nations that that should never happen again which had contributed to Europe's firm abolitionist position. He further indicated that, as the people of Europe emerged from dictatorships, they realized that judges could make mistakes and that fundamental principles of due process were violated on occasion. Irreversible life and death decisions should, therefore, not be left in the hands of any State institution, including the judiciary, as long as the death penalty was allowed. Mr. Lambrinidis also pointed out that in those States that were not open and democratic, and/or where judges and other officers in the system of administration of justice were not sufficiently trained, the risk was even greater. He concluded by emphasizing that the death penalty violated the dignity of all individuals. Everybody and every State should defend their dignity through the abolition of the death penalty.

12. In response to questions from the moderator, Ms. Robinson's remarks focused on issues linked to the regional efforts in the Americas to abolish the death penalty, and the challenges that States had faced prior to ratifying the Protocol to the American Convention on Human Rights to abolish the death penalty, adopted in 1990.

13. Ms. Robinson noted that nearly half of the member States of the Organization of American States (OAS) had ratified the Protocol to the American Convention on Human Rights to abolish the death penalty. In 2011, the Inter-American Commission on Human Rights had published a report on the death penalty entitled "From restrictions to abolition". Also, at the request of a third of the OAS member States, both in 2013 and 2014, the Commission had held hearings to exchange views on the need for OAS-wide abolition of the death penalty.

[2] Available from www.achpr.org/news/2014/07/d150.

[3] Resolution ACHPR/Res.42(XXVI)99.

[4] Resolution ACHPR/Res.136(XXXXIII)08.

14. Ms. Robinson informed the Human Rights Council that Suriname had recently announced that it was on the way towards abolition of the death penalty. She pointed out that the United States of America was the only country in the region that continued to implement executions. Even the United States had, however, recently seen a shift in public opinion regarding the death penalty and a reduction in the number of executions. About a third of its States had abolished the death penalty. Ms. Robinson also stated that one of the key factors for the retention of the death penalty in several States in the Americas was the colonial heritage. There had, however, been significant progress. Thirteen of the 14 anglophone countries in the Americas had retained the death penalty. But in those countries there had been significant progress. Ms. Robinson emphasized that the jurisprudence of the Inter-American Court of Human Rights had contributed to reducing the number of persons sentenced to death in the region. No sentence had been carried out in the anglophone Caribbean since 2008, and there were further many countries in the Caribbean region that did not have any death-row prisoners. Referring to a statement by the Attorney General of one Caribbean State, she reported that human rights were firmly rooted and nurtured in the region. She recommended that, as a first step, executions in the United States should end and those countries with de-facto moratoriums should move to de-jure ones. She also urged Caribbean countries to refrain from using constitutional reform processes to halt progress towards the abolition of the penalty.

15. In response to questions from the moderator, Mr. Mohammed Bedjaoui's remarks focused on issues linked to progress made towards abolition in the Middle East and North Africa, since the adoption of the Arab Charter on Human Rights on 22 May 2004.

16. Mr. Bedjaoui stated that, while the Arab Charter on Human Rights, which came into force in 2008, did not abolish the death penalty, it restricted its use and introduced some safeguards, including an obligation to ensure that it was handed down by a competent court. It only allowed capital punishment for the most serious crimes. Pointing out that international law did not unequivocally abolish the death penalty, he stated that over the previous 20 years an increasing number of States had, however, favoured the abolition of the death penalty, including States from the North African region, notably Algeria. He also emphasized that leaders had to play a role in relation to the abolition of capital punishment. He said that civil society in the Arab world had become very dynamic, and was capable of influencing its leaders. He argued that the death penalty unfortunately frequently went hand-in-hand with authoritarian regimes. Democratization in the Arab world would create opportunities for realization of human rights for all in the region, irrespective of the diversities and identities, including through the abolition of the death penalty.

17. In response to questions from the moderator, Ms. Hossain's remarks focused on issues linked to the regional trends towards the abolition of the death penalty in Asia, human rights concerns regarding continued use of the death penalty in several States in the region, and the obstacles that hindered the abolition of the death penalty in the Asian region.

18. Ms. Hossain stressed that Asia was the only region in the world where there was no regional human rights instrument and no regional mechanism to drive change. She pointed out, however, that the vast majority of executions were only carried out in a few States and there was a discernable trend towards abolition: several Asian countries had abolished the death penalty for all crimes in recent years; and several had ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. Other countries had officially announced their intention to move towards reducing the scope of capital punishment, including by commuting death sentences to life imprisonment. In other countries, the possibility of abolishing the death penalty was being discussed, and laws that permitted the death penalty were being reviewed. Many countries had not carried out executions for several years. Several courts in the region had

either introduced safeguards relating to the situation of individuals on death row, or held the mandatory death penalty to be unconstitutional. Criminal procedure laws had been amended to require interrogations of individuals to be recorded or videotaped, thereby providing safeguards against miscarriages of justice. In some countries, reviews of all death sentences by supreme courts had been mandated. Ms. Hossain also highlighted the fact that there were examples of reform initiatives across the region, from which other countries could learn.

19. Ms. Hossain further emphasized that, while under international law, the death penalty might only be imposed for the most serious crimes, in Asia it was still used in relation to acts linked to sexual relations that were consensual, across sexes and between the same sexes. She stated that, in some countries, conversion from, or renunciation of, religion was considered a capital crime. The fact that laws in some countries continued to allow for the mandatory use of the death penalty was of concern.

20. Other challenges also highlighted by Ms. Hossain included: lack of respect for fair-trial standards; limited access to lawyers; lack of effective representation; lack of qualified interpreters; absence of records of proceedings; unfair and inconsistent sentencing practices; the fact that mitigating circumstances were often not taken into account; lack of limited independence of the judiciary and the imposition of the death penalty through special courts. People living in poverty continued to be disproportionally subjected to the death penalty. Many countries across the region did not have meaningful legal aid frameworks, which was particularly problematic in death penalty cases. Ms. Hossain also expressed concerns regarding wrongful convictions, secrecy surrounding executions and the method of execution. However, she reiterated that positions and discussions were evolving within an increasing number of countries based on domestic and international human rights standards, including provisions included in constitutions.

IV. Summary of the discussion

21. During the interactive phase of the panel discussion, the following delegations spoke: Singapore (on behalf of a group of States), Timor-Leste (on behalf of the Community of Portuguese-speaking Countries), Argentina, Australia, Austria, Norway, Belgium, Albania, Turkey, Paraguay, Netherlands, Brazil, Russian Federation, Slovenia, South Africa, Republic of Moldova, Jamaica, Algeria, Mexico, Pakistan, United Kingdom of Great Britain and Northern Ireland, France, Portugal, Lichtenstein, Ireland, Indonesia and Sudan. The following intergovernmental, national human rights institutions and non-governmental organizations also contributed to the discussion: European Union, International Organization of la Francophonie, National Human Rights Commission of Malaysia, Conseil national des droits de l'Homme du Maroc, Verein Sudwind Entwicklungspolitik, Penal Reform International, Franciscans International, Amnesty International, Friends World Committee for Consultation, and Commonwealth Human Rights Initiative.[5]

[5] Statements by the following delegations were not delivered due to lack of time: Chile, China, Costa Rica, Council of Europe, Ecuador, Egypt, Fiji, Greece, Holy See, Italy, Morocco, Nepal, New Zealand, Nigeria, Poland, Rwanda, Spain, Switzerland, the United Nations Children's Fund and Ahlulbayt Foundation. All statements are available for consultation from the secretariat of the Human Rights Council.

A. Importance of regional and intergovernmental bodies for advancing the abolition of the death penalty

22. Several delegates emphasized the potential of regional instruments to act as catalysts for change on the ground. They could play a role in prohibiting the trade of drugs used for executions, as well as the supply of technical assistance relating to such drugs. Some delegates also emphasized that subregional mechanisms and intergovernmental bodies could be instrumental in advancing the abolition of the death penalty. The Community of Portuguese-speaking countries indicated that the abolition of the death penalty reinforced security and the continuous development and consolidation of human rights. In 2003, the Council of Ministers of the Community adopted a resolution on human rights and the abolition of the death penalty, which contained the commitment of its members to work towards the universal abolition of the death penalty and other cruel, inhuman or degrading treatment or punishment. That commitment had been renewed in 2013 through the adoption of a resolution on the promotion and protection of human rights in the Community. The commitment of the International Organization of la Francophonie to the abolition of the death penalty was expressed in its awareness-raising activities for different francophone networks of lawyers, judges, constitutional courts and national human rights institutions.

B. General remarks on the use of the death penalty

23. Many delegations stated their opposition to the death penalty and held that the death penalty constituted a violation of human rights, in particular the right to life. One delegation quoted Martin Luther King, Jr., who said that: "Darkness cannot drive out darkness."[6] Several States said that the right to life was enshrined in their national constitutions, prohibited the imposition and implementation of executions, and that the protection of that right was any State's duty. Other delegations pointed out that it was critical for States to interpret the right to life broadly.

24. Several States explained that they opposed the death penalty because it violated the dignity of the condemned, as well as the dignity of humanity as a whole. They asserted that the final and cruel nature of capital punishment was per se incompatible with the right to life. They emphasized that the abolition of the death penalty contributed to the progressive development and consolidation of human rights. Some delegates observed that rational arguments in favour of abolition included the lack of evidence that the death penalty deterred crimes; in practice it discriminated between those who could afford, and those who could not afford, a good defence in a judicial system; and it carried the risk of killing innocent people, which could not be tolerated in a civilized society. Several delegates also labelled the death penalty one of the worst forms of cruel, inhuman, and degrading punishment.

25. Some States stressed that there was no international consensus on the abolition of the death penalty. They observed that every State had the inalienable sovereign right to decide about its legal and criminal justice system, without interference by other States. Accordingly, the question of whether to retain or abolish the death penalty and the types of crimes for which the death penalty was applied should be determined by each country, taking into account the circumstances and threats unique to their societies. Those arguments were, however, rejected by other States, with some labelling the death penalty a failure of justice. Several experts and delegates stated that the process towards the abolition of the

[6] Martin Luther King Jr., *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.* (1986).

death penalty went hand-in-hand with respect of the sovereignty of States. In that regard, they called on States that continued to use the death penalty to acknowledge their own constitutional provisions on human rights, including the rights to life and human dignity, and asserted that such constitutional commitments must inform discussions on the death penalty. They also pointed out that, while the death penalty might be a sentence permissible under some domestic laws, the practice must be scrutinized in the light of national human rights commitments as well as obligations under international and regional human rights treaties.

26. Some participants stated that the death penalty was a matter of criminal justice, rather than human rights; and that it underpinned their criminal justice systems in order to guarantee peace, security, and human rights for their citizens. Rejecting that argument, several delegates and experts highlighted the fact that human rights were increasingly perceived as universal, and therefore belonged to all humanity. The criminal justice system of a country should be based on human rights, and it should respect the country's obligations under international human rights law. They found the arguments opposing criminal justice and human rights unconvincing, as ultimately the two complemented each other.

27. Several delegates acknowledged the significant progress achieved so far through the adoption of five resolutions on a moratorium on the use of the death penalty (General Assembly resolutions 62/149 of 2007, 63/168 of 2008, 65/206 of 2010, 67/176 of 2012, 69/186 of 2014) the latest of which was adopted in December 2014 by a record number of 117 votes in favour, with 95 co-sponsors. It called upon all States, inter alia, to establish a moratorium on executions with a view to abolishing the death penalty. Experts cautioned, however, against the risks attached to moratoriums. At times, the fact that a moratorium was in place encouraged judges to issue death sentences more easily, under the assumption that the condemned would not be executed anyway. It was, therefore, desirable to abolish the death penalty in all circumstances.

C. Rights of victims of crimes and the myth of deterrence

28. Some delegates mentioned the rights of victims of crimes to justify the retention of the death penalty. They found it unacceptable to call for the protection of the rights of offenders involved in heinous crimes, while ignoring the rights of victims of such crimes. In response, several delegates and experts called for States to ensure the voices of those victims in whose name the death penalty was being carried out were heard and made part of the process of moving towards abolition. In that regard, several initiatives that involved victims of crimes and their families in the abolition process were highlighted. Several delegates also emphasized that research from across regions showed that not all victims' families felt that killing the perpetrators brought closure to them. They did not often want the death penalty, but rather expected to see justice done effectively and efficiently. Statistics from one country from the Americas showed that, despite the mandatory death penalty for murder and some other crimes, only 5 per cent of convictions for murder were recorded in that country. Finally, the move towards abolition might create space for dialogue and improve respect for victims' rights.

29. Some delegates stated that the death penalty remained an important deterrent against most serious crimes. They stressed that the rights of offenders must always be weighed against the rights of the victims, their families and broader rights of their community to live in peace; and the State had a responsibility to protect the lives of innocent citizens while ensuring that justice was rendered to the victims and their families. Challenging that argument, several delegates and experts referred to an extensive body of research that disproved any suggestion that the death penalty had a deterrent effect on crime. They

pointed to the urgent need to tackle impunity to deter crimes. Impunity was one of the gravest concerns in many regions of the world. Victims wanted to see that justice was done, and attention should focus on judicial effectiveness. In other words, the duty of States was to exercise due diligence: to investigate properly and to ensure that perpetrators could be identified, arrested and prosecuted. They also recommended that authorities should address the root causes of crimes effectively. The irreversibility of an execution in itself was an argument for abolishing the death penalty.

D. Public opinion and the role of political leaders

30. Some delegates reported that the death penalty continued to be used in their countries because of public opinion, which remained in favour of the death penalty for serious crimes. In that regard, experts and several delegates emphasized that public opinion was neither definitive nor static. It was likely to change when people were better informed of the issues. Looking at public opinion on one day did not necessarily reflect the following day's majority views. In that regard, a study in a country in the Americas found that 89 per cent of people supported the death penalty, but when they were informed that innocent people were sometimes executed, that support fell sharply to 35 per cent.

31. The role of political leaders was also highlighted. They needed to be better informed, and must take the lead in changing public opinion. In that regard, experts provided some examples of how national leaders had influenced public discourse. Although public opinion in Greece was very much in favour of the death penalty when the former Greek dictators were sentenced to death in 1974, the Prime Minister decided to impose life imprisonment instead. That decision turned public opinion against the death penalty and eventually led to the abolition of the death penalty in Greece. In France, although public opinion was overwhelmingly in favour of the death penalty in 1981, its abolition decided by the then President of France led to a change of public opinion. Speakers emphasized that abolishing the death penalty needed leadership, vision and courage.

E. Implementation of human rights standards and safeguards

32. Several delegations emphasized that States that continued to apply the death penalty must ensure for the individuals concerned the full protection set out in international human rights instruments, including the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Economic and Social Council safeguards guaranteeing protection of the rights of those facing the death penalty.[7] In that regard, some delegates of retentionist States explained that rights and safeguards were respected in their countries when imposing the death penalty, including through fair trials; and it was only used for the "most serious crimes", as determined by each State taking into account their unique circumstances. Several delegations expressed concern, however, with regard to the imposition of the death penalty in violation of fair-trial standards and safeguards in a number of States across various regions. They deplored the fact that international safeguards, while universally recognized, were not necessarily implemented. In particular, they were concerned about: the use of the death penalty for crimes that did not meet the threshold of "most serious crimes" under international human rights law; mandatory death penalty provisions in some countries; arbitrary application of the death penalty in secrecy; the inhuman and degrading conditions of detention for death-row prisoners; the use of

[7] The safeguards were approved on 25 May 1984 by the Economic and Social Council in its resolution 1984/50.

unregulated substances in the formulas of lethal injections; public executions; the increase in the number of executions in certain countries; the expansion of the range of categories of crime punishable by the death penalty in some countries; the use of the death penalty against children, persons with disabilities and other groups at particular risk; the resumption of executions after decades of de-facto moratoriums in some States; and the failure to prevent miscarriages of justice. Some delegations also highlighted the need to discuss social and economic implications of capital punishment.

33. Some delegates were concerned that persons accused of capital crimes did not often benefit from the assistance of qualified interpreters. In addition, many had no access to a lawyer and effective representation and no meaningful legal aid frameworks were in place. In many countries, the judiciary was not independent, followed unfair and inconsistent sentencing practices and failed to consider mitigating factors. The fact that special courts were sometimes allowed to impose the death penalty, the lack of records of proceedings, and the lack of proper notice regarding the time and date of executions were also worrisome.

34. Several delegates were concerned that some retentionist States had expanded the categories of crimes for which the death penalty might, or in some cases must apply, and that some of those crimes did not meet the threshold of "most serious crimes" under international human rights law. They also pointed out that in some States, the majority of death sentences handed down and executions carried out were for drug-related offences in violation of international human rights law as such crimes did not meet the threshold of "most serious crimes". In that context, it was remarked that the forthcoming special session of the General Assembly on the world drug problem, to be held in 2016, would offer opportunities to discuss international cooperation on alternative approaches to combating the illegal trafficking of narcotic drugs.

35. Furthermore, several delegates observed that capital punishment did not serve any deterrent purpose in combating terrorism, and deplored that some States expanded the use of the death penalty for crimes relating to terrorism. Expressing deep concern about atrocities committed by the Islamic State in Iraq and the Levant or by other terrorist groups in different parts of the world, they emphasized that all efforts must be made to counter terrorism and hold perpetrators accountable, but any measures to counter those threats needed to be consistent with the common values of justice and human rights. Legislation that included a vague definition of terrorism contravened human rights. They also said the death penalty clearly did not deter persons from committing terrorist acts as being executed transformed them into martyrs.

36. Several delegates were concerned about the lack of respect for the rights of persons facing the death penalty outside their country. In that regard, the panel was informed that Argentina had submitted a habeas petition in the State of Texas in the United States regarding flagrant violations of the rights of an Argentinian on death row since 1996.

37. Several delegations pointed out that a small number of countries continued to apply the death penalty at an alarming rate. For instance, it was remarked that at least 753 individuals were reportedly executed in 2014 in the Islamic Republic of Iran (A/HRC/28/70, para. 13). Delegates also expressed concerns that countries from various regions, such as Afghanistan, the Gambia, India, Indonesia, Japan, Jordan, Pakistan and Papua New Guinea, had recently ended long-standing moratoriums or resumed executions. Several speakers said that those developments showed the need to pursue and reinforce the determination to end the death penalty.

38. With reference to views of scholars from the Muslim world, it was stated, that, based on the Islamic principles of pardon, redemption, mercy and forgiveness, the death penalty was incompatible with Islam. The death penalty failed to meet key criteria or objectives of

punishment under Islamic principles, in particular the possible deterrent effect of the punishment, the fact that it might bring about peace within society, and its corrective nature.

F. Impact of the death penalty on other individuals

39. Some delegates discussed the issue of the wider impact of the death penalty on other individuals, and mentioned in particular, that the human rights of children of parents sentenced to death or executed should be considered. It was also reported that that issue had been paid increasing attention by the Human Rights Council. In particular, in its resolution 22/11, the Council had acknowledged the importance of the protection of human rights of children of parents sentenced to death or executed. It had also organized a panel on that issue (see A/HRC/25/33). In that regard, the African Commission on Human and Peoples' Rights had stressed the negative psychological impact that the death penalty had on children and other family members of those sentenced to death. States should render more accessible and transparent the process of clemency pleas for the families and victims of the death penalty.

40. It was also emphasized that, according to some research, the use of the death penalty had major negative effects on other individuals, including on lawyers who defended the condemned person, prison officials in charge of death-row prisoners, and families of victims of crimes. For instance, prison officials in death-row quarters suffered long-term trauma, lawyers of executed persons suffered from depression and children of parents sentenced to death also suffered trauma.

41. With regard to executions of mothers of young children, experts referred to article 30 of the African Charter on the Rights and Welfare of the Child that prohibited death sentences for mothers of infants and young children.[8] General comment 1 to the Charter clarified that States parties should not evade their commitment not to sentence pregnant women to death simply by waiting until after they had given birth.[9]

G. Ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights

42. Several delegations stressed the importance of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and called for its ratification. As at March 2015, the Protocol had been ratified by 81 States. It was emphasized that increased ratification of or accession to the Protocol was needed to advance the universal abolition of the death penalty. It was pointed out that the Russian Federation was considering acceding to the Protocol.

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[8] African Charter on the Rights and Welfare of the Child (OAU Doc. CAB/LEG/24.9/49 (1990), entered into force on 29 November 1999), art. 30 (e).

[9] African Committee of Experts on the Rights and Welfare of the Child, *General Comment on Article 30 of the African Charter on on the Rights and Welfare of the Child*), para. 56, available from www.refworld.org/pdfid/545b49844.pdf.

H. Role of domestic courts, national human rights institutions and other stakeholders

43. Several delegates recommended analysis of cases in which domestic courts had sought to interpret constitutional human rights provisions consistent with regional and international human rights standards, thereby creating rich sources of jurisprudence on capital punishment. Such an analysis could contribute to advance discussion on the abolition of the death penalty and harmonization of death penalty regimes across borders. A 1995 judgement of the Constitutional Court of South Africa was highlighted, in which the Court had declared the death penalty unconstitutional and had stated that: "The rights to life and dignity are the most important of all human rights, and the source of all other personal rights ... By committing ourselves to a society founded on the recognition of human rights we are required to value these two rights above all others."[10] That implied that, by retaining a punishment that did not testify to high regard for human dignity and the value of human life, the State had contributed to the degeneration of the moral fibre of the society. The State as a role model for society had to take the lead not only in preaching respect for the law but in demonstrating regard for human life and dignity.

44. Several delegates emphasized that various stakeholders, including national human rights institutions, civil society, political organizations, parliamentarians, religious bodies, academic institutions and networks, and trade unions, had a role to play in advancing the abolition of the death penalty. It was emphasized that OHCHR should advance the cause of abolition by disseminating factual information, increasing awareness and understanding of the implications of the death penalty, and through technical assistance. The role of the International Commission against the Death Penalty and the World Congress against the Death Penalty in advancing global abolition was also highlighted.[11]

V. Conclusions

45. **In its concluding remarks, the panel emphasized that it was the international community's responsibility to move towards universal abolition of the death penalty. States had to protect human dignity as part of the overall protection of human rights for all. By abolishing the death penalty, States placed human dignity at the centre. It was also stated that abolition required political and technical support as well.**

46. **The panel reiterated that regional mechanisms must play their role effectively. As they were closer to the ground and had a better understanding of the regional context, they were well placed to encourage States that maintained the death penalty to respect human rights. The example of Europe illustrated that regional and multilateral organizations were key to advancing abolition. A key lesson learned in Europe was that abolition could become a reality only as a result of increasing awareness and exchange of ideas between countries and societies. Experience gathered in Africa, the Americas, Asia and the Middle East showed that it was possible to move gradually towards abolition through dialogue and advocacy and that the death penalty was not about any particular culture or any religion.**

47. **The panel also encouraged further research, particularly into the socioeconomic profile of those who were subjected to the death penalty, assessing to**

[10] South Africa: Constitutional Court, *State* v. *Makwanyane and Another*, 1995 (6) BCLR 665.

[11] The sixth World Congress against the Death Penalty will be hosted by Norway in 2016.

what extent poverty and the absence of legal representation and of access to justice played a role.

48. Impunity bred popular support for the death penalty. In that regard, what was needed was a rational and calm discourse that took into account different perspectives, including the views of victims of crime. Panellists also highlighted the fact that combating impunity could be successful only where national laws were effective and applied in practice.

49. The panel further observed that lack of information on the use of the death penalty did not permit victims and other stakeholders to monitor and quantify practices in some countries. States should provide full information with regard to convictions and actual executions. The convicted person, the lawyers, family members and others concerned were also entitled to be informed about the execution.

50. Panellists emphasized that States that had abolished the death penalty, and had established a moratorium, should continue to exchange information with States that continued to use it. While welcoming the fact that several abolitionist States had offered to share their experiences, the panel called on those States that maintained the death penalty to reflect on such lessons. In that context, the panel underlined the role played by the Human Rights Council and other United Nations bodies, including human rights treaty bodies and special procedures to advance discussions on the universal abolition of the death penalty.